

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Escrow Agent License of:

3 No. 08F-BD029-BNK

4 **GREAT AMERICAN TITLE INSURANCE**  
5 **COMPANY, INC. DBA GREAT WESTERN**  
6 **TITLE AGENCY AND JOSEPH F. RAATS,**  
7 **PRESIDENT**

8 One E. Camelback Road, Suite 780  
9 Phoenix, AZ 85012

10 Respondents.

11 **SUPERINTENDENT'S FINAL**  
12 **DECISION AND ORDER**

13 The Superintendent of Financial Institutions (the "Superintendent") having reviewed the record in  
14 this matter, including, the Administrative Law Judge Decision attached and incorporated herein by this  
15 reference, adopts the Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommended  
16 Order and modifies in part the Findings of Fact Paragraph 7 and the Recommended Order Paragraph one by  
17 replacing the license number BK 0907840 with EA 0907840.

18 **ORDER**

19 **IT IS ORDERED** that Respondents' Escrow Agent License Number EA 0907840 is revoked  
20 effective as of the date of this Order.

21 **IT IS FURTHERED ORDERED** that Great American Title Insurance Company, Inc. dba Great  
22 Western Title Agency and Joseph F. Raats shall pay a civil money penalty in the amount of \$10,000.00  
23 within thirty (30) days of the effective date of this Order.

24 **NOTICE**

25 The parties are advised that this Order becomes effective immediately and the provisions of this  
26 Order shall remain effective and enforceable except to the extent that, and until such time as, any provision  
27 of this Order shall have been modified, terminated, suspended, or set aside by the Superintendent or a court  
28 of competent jurisdiction.

DATED this 4th day of March, 2008.



Felicia Rotellini  
Superintendent of Financial Institutions

1 ORIGINAL filed this 4th day of  
2 March, 2008 in the office of:

3 Felecia Rotellini  
4 Superintendent of Financial Institutions  
5 Arizona Department of Financial Institutions  
6 ATTN: June Beckwith  
7 2910 North 44th Street, Suite 310  
8 Phoenix, Arizona 85018

9 COPY of the foregoing mailed/hand delivered  
10 This same date to:

11 Thomas Shedden, Administrative Law Judge  
12 Office of Administrative Hearings  
13 1400 West Washington, Suite 101  
14 Phoenix, AZ 85007

15 Craig Raby, Assistant Attorney General  
16 Office of the Attorney General  
17 1275 West Washington  
18 Phoenix, AZ 85007

19 Robert Charlton, Assistant Superintendent  
20 Richard Fergus, Licensing  
21 Tom Giallanza, Assistant Superintendent  
22 Mack Wynegar, Senior Examiner  
23 Arizona Department of Financial Institutions  
24 2910 N. 44th Street, Suite 310  
25 Phoenix, AZ 85018

26 AND COPY MAILED SAME DATE by  
27 Certified Mail, Return Receipt Requested, to:

28 Nancy L. Allf  
29 Gonzalez, Faggio, & Harlan LLP  
30 411 E. Bonneville, Suite 100  
31 Las Vegas, NV 89101

32 BY: 

1                                   **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2  
3 In The Matter Of The Escrow Agent  
4 License of:

**No. 08F-BD029-BNK**

5 GREAT AMERICAN TITLE INSURANCE  
6 COMPANY, INC.  
7 dba GREAT WESTERN TITLE AGENCY  
8 AND JOSEPH F. RAATS, PRESIDENT  
9 One E. Camelback Road Suite 780  
10 Phoenix, AZ 85012

**ADMINISTRATIVE LAW JUDGE  
DECISION**

11  
12 **RESPONDENTS**

13                   **HEARING:** January 22, 2008

14                   **APPEARANCES:** No one appeared for Respondents; Assistant Attorney  
15 General Craig Raby appeared for the Arizona Department of Financial Institutions.

16                   **ADMINISTRATIVE LAW JUDGE:** Thomas Shedden

17  
18 The Arizona Department of Financial Institutions issued an Order of Summary  
19 Suspension and Notice of Hearing to Respondents. Based on the evidence of record,  
20 the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law  
21 and Order:

22                                   **FINDINGS OF FACT**

23 1.       On December 18, 2007 the Arizona Department of Financial Institutions (the  
24 "Department") issued to Great American Title Insurance Company, Inc. d.b.a. Great  
25 Western Title Agency ("Great Western") and its president Joseph F. Raats (collectively  
26 "Respondents") an Order of Summary Suspension and Notice of Hearing to Revoke  
27 and Complaint.

28 2.       The Notice of Hearing set the matter for hearing at 9:00 a.m. January 22, 2008  
29 at the Office of Administrative Hearings.

30  

Office of Administrative Hearings  
1400 West Washington, Suite 101  
Phoenix, Arizona 85007  
(602) 542-9826

1  
2 3. The Notice of Hearing and Complaint alleged that Respondents had violated  
3 A.R.S. §§ 6-817(A)(2) and (A)(10) and A.A.C. R20-4-708.

4 4. Respondents did not file any Answer to the Notice of Hearing and Complaint.

5 5. At the scheduled hearing time no representative appeared for Respondents.  
6 After a 15 minute grace period the Administrative Law Judge convened the hearing in  
7 Respondents' absence.

8 6. The Department presented the testimony of Examiner Mack Wynegar and  
9 Assistant Superintendent Robert Charlton, and had 19 exhibits entered into evidence  
10 (1, 1a – 1d; 2; 3, 3a – 3f; 4, 4a; 5b, 5 d, 5e, and 5f).

11 7. Great Western is an Arizona corporation authorized to transact business as an  
12 escrow agent and holds License No. BK 0907840. See A.R.S. § 6-801.

13 8. Mr. Raats is Great Western's president and is authorized to transact business  
14 as an escrow agent as defined in A.R.S. § 6-801(6).

15 9. Great Western filed for bankruptcy after the Order of Summary Suspension was  
16 issued.

17 10. Mr. Wynegar has about five years experience as an examiner of which three  
18 years relates to escrow and title companies. Mr. Wynegar conducted an examination of  
19 Respondents from August 2007 through December 2007. Mr. Wynegar presented  
20 credible testimony about his findings:

- 21 a. Great Western had negative equity of \$99, 283.92 as of June 2006. See  
22 *also* Ex. 1a. The Department typically requires equity of at least \$100,000.
- 23 b. In the first six months of 2006, Great Western had a net loss of  
24 \$75,751.00. See *also* Ex. 1a.
- 25 c. In a letter dated August 17, 2006, the Department informed Great  
26 Western that its license could be revoked pursuant to A.R.S. § 6-  
27 817(A)(10). See *also* Ex. 1b.
- 28 d. Great Western's annual independent audit dated December 31, 2006,  
29 shows that Great Western had a stockholder deficit of \$59,182 and a net  
30 loss of \$46,067. See *also* Ex. 2. This information shows that Respondents

1 were in violation of A.R.S. §§ 6-817(A)(2) and (A)(10) and A.A.C. R20-4-  
2 708.

- 3 e. The independent CPA firm that prepared Exhibit 2 for Respondents noted  
4 that it had substantial doubt as to whether Great Western could remain a  
5 going concern, and it noted that Great Western was in violation of Arizona  
6 State escrow requirements. *See also* Ex. 2.
- 7 f. Exhibit 2 shows that Mr. Raats made a capital contribution of \$100,000,  
8 but then Great Western loaned \$40,000 to a related entity. The \$100,000  
9 contribution was made based on the Department's direction, and the  
10 subsequent loan was not in conformity with the Department's direction.  
11 Even with the full \$100,000, Great Western was under-funded.
- 12 g. Exhibits 3, 3a and 3c show that Great Western's financial condition was  
13 deteriorating over time. From January 2007 through October 2007 Great  
14 Western had a net loss of \$103,018.77. *See also* Ex. 3e.
- 15 h. During his examination of Great Western's financial condition, Mr.  
16 Wynegar discussed Great Western's financial deficiencies with Mr. Raats.  
17 Mr. Raats and Mr. Wynegar discussed Exhibit 1a and Mr. Raats was  
18 aware of the negative equity. Mr. Raats was aware of Exhibits 3 and 4,  
19 and the Department sent Mr. Raats several letters detailing its concerns  
20 about Great Western's financial status. *See e.g.*, Exs. 1b, 1c and 1d.
- 21 i. Great Western's CPA's issued an Auditors' Report of Great Western's  
22 fiduciary accounts in which they concluded Great Western had material  
23 weaknesses and reportable conditions. *See also* Ex. 4a.
- 24 j. After the Order of Summary Suspension was issued, Mr. Wynegar  
25 completed a report on his investigation in which he lists 33 violations.
- 26 k. The Department sent the Notice of Hearing to Mr. Raats at his last known  
27 address.

28 11. Mr. Charlton has been employed by the Department for 21 years. His areas of  
29 responsibility include escrow licensees and the Department's examiners report to him.  
30 Mr. Charlton provided credible testimony:

- a. On December 24, 2007, the Department received the certified mail "green card" showing that on December 18, 2007 Great Western received the Order of Summary Suspension and Notice of Hearing to Revoke.
- b. The Department served Great Western and Mr. Raats personally on December 31, 2007 as evidenced by Affidavits provided to the Department by the process server, but this personal service was not more than 30 days before the instant hearing.
- c. Prior to the hearing, Mr. Charlton had discussed this matter with Mr. Wynegar. Mr. Charlton's opinion is that Mr. Raats had personal knowledge of Great Western's financial deficiencies.
- d. Mr. Charlton's opinion is that Great Western's license should be revoked.
- e. Great Western's bankruptcy filing increased the Department's concerns.
- f. The Department is requesting that Mr. Raats be assessed a \$10,000.00 penalty, which Mr. Charlton believes is fair.

#### **CONCLUSIONS OF LAW**

1. The Department bears the burden of persuasion. See A.R.S. §§ 41-1092.07(G)(2) and (G)(3). The standard of proof on all issues is that of a preponderance of the evidence. See A.A.C. R2-19-119.
2. A preponderance of the evidence is "[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." BLACK'S LAW DICTIONARY 1182 (6<sup>th</sup> ed. 1990).
3. Mr. Raats was provided proper notice of the hearing because the Department sent the Notice of Hearing to his address of record by certified mail. See A.R.S. § 6-817 and A.R.S. § 41-1092.04.
4. The preponderance of evidence shows that Great Western has had negative equity since as early as June 2006 and has been accruing losses since that time, which constitutes a violation of A.R.S. § 6-817(10). See A.A.C. R20-4-708.

1 5. The preponderance of evidence shows that Mr. Raats was personally aware  
2 that Great Western had negative equity and was accruing losses in violation of statute,  
3 as shown by the independent audit reports and the Department's letters to Mr. Raats,  
4 which provide a basis for the Department to issue a civil penalty of up to \$5,000.00 per  
5 day. See A.R.S. § 6-132.

6 6. The Department has met the burden to show that revocation of Great Western's  
7 license is appropriate. The length of time that Great Western has had negative equity,  
8 Great Western's bankruptcy filing, and Great Western's failure to file an Answer or  
9 appear at the instant hearing demonstrate that other, less severe remedies, are not  
10 appropriate.

11 7. The Department's request that a \$10,000.00 civil penalty be assessed against  
12 Mr. Raats is reasonable considering that as early as August 17, 2006, the Department  
13 informed Mr. Raats that Great Western was in violation of A.R.S. § 6-817(10), that Mr.  
14 Raats was aware of Great Western's independent auditors' opinion that Great Western  
15 was in violation of the state's escrow laws and had a negative equity, and because Mr.  
16 Raats withdrew \$40,000 after he was directed to (and did) make the \$100,000 capital  
17 contribution.

#### 18 **RECOMMENDED ORDER**

19 **IT IS RECOMMENDED** that the Director of the Arizona Department of Financial  
20 Institutions revoke Great American Title Insurance Company, Inc. d.b.a. Great Western  
21 Title Agency's License No. BK 0907840; and

22 **IT IS FURTHER RECOMMENDED** that the Director of the Arizona Department of  
23 Financial Institutions assess a civil penalty of \$10,000.00 against Mr. Raats to be paid  
24 within 30 days of the effective date of the Director's final order in this matter.  
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30


1 Done this day, February 8, 2008

2  
3 

4 Thomas Shedden  
5 Administrative Law Judge

6  
7 Original transmitted by mail this  
8 11 day of Feb., 2008, to:

9 Felecia Rotellini, Superintendent  
10 Arizona Department of Financial Institutions  
11 ATTN: Susan L. Ross  
12 2910 North 44th Street, Suite 310  
13 Phoenix, AZ 85018

14 By   
15